

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BOBBY NUNN,

Plaintiff,

-against-

NFL ENTERPRISES, LLC and
NBCUNIVERSAL MEDIA, LLC,

Defendants.
-----X

No. 22-CV-5977 (ALC)

**DEFENDANT NFL ENTERPRISES
LLC'S ANSWER TO PLAINTIFF'S
COMPLAINT**

Defendant NFL Enterprises LLC (the "NFL"), for itself and no other defendant, answers the allegations in the numbered paragraphs of the Complaint of Plaintiff Bobby Nunn ("Nunn"), filed on July 13, 2022 (Dkt. 1) as follows. The NFL denies all allegations in Nunn's Complaint not specifically admitted herein.

INTRODUCTION

The NFL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the un-numbered paragraph under "Introduction," and on that basis denies said allegations. The NFL specifically denies any infringement.

PARTIES

1. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1, and on that basis denies said allegations.

2. The NFL denies the allegations contained in Paragraph 2, except it admits it is doing business in the State of New York, and it states that it is a limited liability company organized under the laws of Delaware.

3. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3, and on that basis denies said allegations.

4. Paragraph 4 contains legal conclusions to which no response is required. To the extent a response is required, the NFL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4, and on that basis denies said allegations.

JURISDICTION AND VENUE

5. Paragraph 5 contains legal conclusions to which no response is required. To the extent a response is required, the NFL lacks knowledge or information sufficient to form a belief as to the truth of the allegations relating to any defendant other than the NFL, and on that basis denies said allegations. The NFL further denies the remainder of the factual allegations as written, but states that it does not challenge personal jurisdiction or venue in this action.

6. Paragraph 6 contains legal conclusions to which no response is required. To the extent a response is required, the NFL denies that Nunn has a valid claim arising under the Copyright Act.

7. Paragraph 7 contains legal conclusions to which no response is required. To the extent a response is required, the NFL denies any factual allegations as written, but does not challenge subject matter jurisdiction in this action.

GENERAL FACTUAL ALLEGATIONS

8. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8, and on that basis denies said allegations.

9. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9, and on that basis denies said allegations.

10. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10, and on that basis denies said allegations.

11. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11, and on that basis denies said allegations.

12. The NFL denies the allegations contained in Paragraph 12 insofar as they relate to the NFL. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 12, and on that basis denies said allegations.

13. The NFL denies the allegations contained in Paragraph 13.

14. The NFL denies the allegations contained in Paragraph 14 insofar as they relate to the NFL. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 14, and on that basis denies said allegations.

15. Paragraph 15 contains no factual allegations to which the NFL can respond. Insofar as there are any factual allegations made in Paragraph 15, the NFL denies said allegations, and the NFL specifically denies any infringement.

16. The NFL denies that a license from Plaintiff for the alleged use of the Subject Work was required and denies that the use at issue was infringing. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 16, and on that basis denies said allegations, except it states, on information and belief, that NBCUniversal Media, LLC possesses a license that covers all allegedly unauthorized uses of the Subject Work.

17. The NFL denies the allegations contained in Paragraph 17, except it admits that Nunn contacted the NFL on or about January 26, 2022 via email, which correspondence speaks for itself. The NFL further states that it lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 17, and on that basis denies said allegations.

FIRST CLAIM FOR RELIEF

18. In response to Paragraph 18, the NFL repeats, re-alleges, and incorporates herein by reference as though fully set forth, its responses to the allegations contained in the preceding paragraphs of the Complaint.

19. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19, and on that basis denies said allegations. The NFL specifically denies any infringement.

20. Paragraph 20 contains legal conclusion to which no response is required. To the extent a response is required, the NFL denies the allegations contained in Paragraph 20. The NFL specifically denies any violation of Plaintiff's rights.

21. The NFL denies the allegations contained in Paragraph 21 insofar as they relate to the NFL. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 21, and on that basis denies said allegations.

22. The NFL denies the allegations contained in Paragraph 22 insofar as they relate to the NFL. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 22, and on that basis denies said allegations. The NFL specifically denies any violation of Plaintiff's rights.

23. The NFL denies the allegations contained in Paragraph 23 insofar as they relate to the NFL. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 23, and on that basis denies said allegations. The NFL specifically denies any wrongful conduct or that Nunn has been damaged or harmed.

24. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24, and on that basis denies said allegations. The NFL specifically denies any unauthorized copying.

25. The NFL denies the allegations contained in Paragraph 25 insofar as they relate to the NFL. The NFL lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25, and on that basis denies said allegations.

26. The NFL denies the allegations contained in Paragraph 26.

27. The NFL denies the allegations contained in Paragraph 27.

28. The NFL denies the allegations contained in Paragraph 28.

29. Paragraph 29 contains legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations contained in Paragraph 29.

30. Paragraph 30 contains legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations contained in Paragraph 30.

31. Paragraph 31 contains legal conclusions to which no response is required. To the extent a response is required, the NFL denies the allegations contained in Paragraph 31.

THE NFL'S AFFIRMATIVE DEFENSES

First Affirmative Defense **(Failure to State a Claim)**

1. Nunn's Complaint fails to state a cause of action upon which relief may be granted.

Second Affirmative Defense
(License)

2. Nunn's claim is barred, in whole or in part, because the allegedly unauthorized use of the Subject Work was licensed.

Third Affirmative Defense
(Statute of Limitations)

3. Nunn's claim is barred, in whole or in part, by the applicable statute of limitations, 17 U.S.C. § 507.

Fourth Affirmative Defense
(Ephemeral Use)

4. Nunn's claim is barred, in whole in or in part, because the allegedly unauthorized reproduction of the Subject Work constituted an ephemeral use as provided in 17 U.S.C. § 112.

Fifth Affirmative Defense
(Fair Use)

5. Nunn's claim is barred, in whole or in part, because any use of the Subject Work constituted fair use as provided in 17 U.S.C. § 107.

Sixth Affirmative Defense
(Reservation of Remaining Defenses)

6. The NFL reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Copyright Laws of the United States, and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

PRAYER FOR RELIEF

WHEREFORE, the NFL prays that judgment be entered against Nunn as follows:

- a. That Nunn's Complaint, and all claims asserted therein, be dismissed with prejudice;
- b. That Nunn take nothing by way of his Complaint;

- c. That the NFL be awarded its attorney's fees and full costs pursuant to 17 U.S.C. § 505;
and
- d. That the Court grant the NFL such other and further relief and the Court may deem just
and proper.

Dated: New York, New York
February 6, 2023

LOEB & LOEB LLP

By: /s/ Tal E. Dickstein

Tal E. Dickstein
tdickstein@loeb.com
Barry I. Slotnick
bslotnick@loeb.com
Edward J. Delman
edelman@loeb.com
345 Park Avenue
New York, NY 10154
Tel: (212) 407-4000
Fax: (212) 407-4990

*Attorneys for Defendants
NFL ENTERPRISES LLC and
NBCUNIVERSAL MEDIA, LLC*

23512436